



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2018-0744; FRL-9998-01-Region 9]

#### Air Plan Approval; Hawaii; Regional Haze Progress Report

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving Hawaii's Regional Haze 5-Year Progress Report ("Progress Report" or "Report"), submitted on October 20, 2017, as a revision to its state implementation plan (SIP). This SIP revision addresses requirements of the Clean Air Act (CAA or "Act") and the EPA's rules that require states to submit periodic reports describing the progress toward reasonable progress goals (RPGs) established for regional haze and a determination of adequacy of the state's existing regional haze plan. The EPA is approving the Report on the basis that it addresses the progress report and adequacy determination requirements for the first implementation period for regional haze.

**DATES:** This rule is effective on [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2018-0744. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket

materials are available at <https://www.regulations.gov>, or please contact the person identified in the FOR FURTHER INFORMATION CONTACT section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Wienke Tax, Air Planning Office (AIR-2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA, 94105; (415) 947-4192; [tax.wienke@epa.gov](mailto:tax.wienke@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever “we,” “us,” or “our” is used, we mean the EPA.

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## **I. Background and Purpose**

On April 11, 2019, the EPA published a notice of proposed rulemaking (NPRM) proposing to approve the Progress Report, submitted by the Hawaii Department of Health (DOH) on October 20, 2017.<sup>1</sup> A detailed discussion of the Report and the EPA’s rationale for approving the SIP revision is provided in the NPRM and will not be restated here.

## **II. Public Comment**

The EPA’s proposed action provided a 30-day public comment period that ended on May 13, 2019. During this period, we received five anonymous comments, two of which were identical. The two identical comments and one additional comment expressed general support for our proposed approval of the Report but did not address the specifics of our proposal and are

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<sup>1</sup> 84 FR 14634.

therefore not addressed below. All five comments are included in the docket for this rulemaking. We summarize the two more detailed comments below and provide our responses.

*Comment 1:* The commenter states that Hawaii's Progress Report provides overwhelming evidence that Hawaii has successfully decreased human-generated emissions that contribute to the regional haze problem. The commenter points out that the Progress Report also states that point source emissions have increased 27 percent and that there have been significant increases in emissions from the "Other Fire/Prescribed Burning" category. The commenter believes that the EPA should compare these statistics to existing economic data to examine whether these pollution increases are due to higher production rates or increased carelessness of businesses. The commenter goes on to say that if "economic data claims that there has been a proportional increase, then Hawaii should implement incentives for companies that reduce emissions in future production." The commenter then asserts that "if economic data states otherwise, Hawaii should adopt new business regulations that force companies to reduce emissions." The commenter believes these "changes would further improve the results of the Hawaiian report - despite the already outstanding results." The commenter concludes that after this research has been conducted, the EPA should approve the Report due to many of the outlined benefits, but that the EPA should also help Hawaii adopt policies that reduce burning and point source pollution. Finally, the commenter asserts that global warming is a large issue in 2019 and taking small steps to correct the effects of this international issue would not be harmful.

*Response 1:* We agree that Table 6.0-2, entitled "Differences in Statewide Anthropogenic Nitrogen Oxide Emissions" in the Hawaii Progress Report, which we reproduced in our proposed

rulemaking as Table 5,<sup>2</sup> indicates that there was a 27 percent increase in nitrogen oxide (NO<sub>x</sub>) emissions from point sources between 2005 and 2011. However, we note that the same table indicates that total NO<sub>x</sub> emissions from all anthropogenic sources combined decreased by four percent over that time period. Similarly, while there were increases in emissions of NO<sub>x</sub>, sulfur dioxide (SO<sub>2</sub>) and volatile organic compounds (VOC) from the “Other Fire/Prescribed Burning” category between 2005 and 2011, there were overall decreases in anthropogenic NO<sub>x</sub> and SO<sub>2</sub> during the same period, and only a small (four percent) increase in anthropogenic VOC emissions.<sup>3</sup>

In addition, as both the Progress Report and our proposed rulemaking noted, the dominant visibility-impairing pollutant in Hawaii's Class I areas during the first planning period was SO<sub>2</sub>. Therefore, the EPA's reasonable progress analysis for Hawaii for the first planning period focused primarily on significant sources of SO<sub>2</sub> and concluded that NO<sub>x</sub> emissions were a “secondary concern” during that period.<sup>4</sup> Thus, even if NO<sub>x</sub> emissions were not declining in the first planning period, their effect on visibility was secondary compared to SO<sub>2</sub> emissions during that period.

Finally, the portion of the comment about global warming is not germane to the EPA's proposed action on Hawaii's Progress Report.

*Comment 2:* The commenter asserts that the EPA should not approve Hawaii's Progress Report and the negative declaration stating that further revision of the existing regional haze plan is not needed at this time. The commenter states that the dominant cause of visibility impairment in Hawaii's Class I areas is sulfate compounds, and that over 96 percent of the sulfate emissions are

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<sup>2</sup> 84 FR 14634, 14638.

<sup>3</sup> Id. at 14638, Tables 4-6.

<sup>4</sup> 77 FR 31692, 31707.

from Hawaii's volcano. The commenter asserts that the eruption of an active volcano is unpredictable, so the sulfate compounds in the air also vary year to year. The commenter states that the current plan may improve visibility in Class I this year, but it does not represent it will account for the following years. The commenter further states that the current method and control procedures are effective and reliable, but because the commenter considers Hawaii to be a "high-risk" area given the number of visitors, the commenter asserts that the EPA needs to be extremely careful with people's safety.

*Response 2:* The commenter makes several distinct points. We agree with the commenter that volcanic eruptions are unpredictable and have year-to-year variability, resulting in variability in SO<sub>2</sub> emissions and sulfate-related visibility effects. However, Hawaii DOH does not have the ability to control or influence these emissions, and the goal of the regional haze program is to remedy visibility impairment resulting from man-made air pollution and does not require control of natural sources such as volcanoes. Therefore, we agree with Hawaii DOH's conclusion that "the existing implementation plan requires no further substantive revision at this time in order to achieve established goals for visibility improvement and emissions reductions," and we find that Hawaii's conclusion is consistent with the Regional Haze Rule at 51.308(h)(1).

Additionally, the commenter states that the current plan may improve visibility in Class I areas this year, but that the plan does not account for subsequent years. The Progress Report only addresses the first regional haze planning period which extends to 2018; a SIP revision covering the second regional haze implementation period ending in 2028 is due to the EPA by July 31, 2021.

Finally, while we agree with the commenter regarding the importance of safety, it is important to note that the purpose of the regional haze program is to protect visibility. The CAA

provides separate processes for addressing the health impacts of SO<sub>2</sub>, including the establishment of health-based national ambient air quality standards for SO<sub>2</sub>, the designation of areas as attainment or nonattainment based on ambient air quality data, and the development of SIPs to ensure attainment and maintenance of the SO<sub>2</sub> standard.

### **III. Final Action**

For the reasons described in our responses to comments, the comments received do not alter our proposed determination that the Hawaii Progress Report addresses the progress report and adequacy determination requirements for the first implementation period for regional haze. Therefore, the EPA is approving Hawaii's Regional Haze Progress Report, submitted by Hawaii DOH on October 20, 2017, as meeting the applicable requirements of the CAA and the federal Regional Haze Rule, as set forth in 40 CFR 51.308(g), as a revision to the Hawaii SIP. The EPA is approving Hawaii's determination that the existing regional haze plan is adequate to meet the existing RPGs and requires no substantive revision at this time, as set forth in 40 CFR 51.308(h).

We have also determined that Hawaii fulfilled the requirements in 40 CFR 51.308(i) regarding state coordination with federal land managers.

### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866;
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the ***Federal Register***.

A major rule cannot take effect until 60 days after it is published in the ***Federal Register***. This action is not a “major rule” as defined by 5 U.S.C. 804(2). Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)



**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Visibility, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 et seq.

Dated: July 30, 2019.

Deborah Jordan,  
Acting Regional Administrator,  
EPA Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 et seq.

**Subpart M—Hawaii**

2. Section 52.620, the table in paragraph (e) is amended by adding an entry for “State of Hawaii Air Pollution Control Implementation Plans for Regional Haze,” after the entry for “Section XIV—Resources” to read as follows:

**§52.620 Identification of plan.**

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(e) \* \* \*

**EPA-Approved Non-Regulatory and Quasi-Regulatory Measures**

| Name of SIP provision  | Applicable geographic or nonattainment area or title/subject | State submittal date | EPA approval date   | Explanation |
|--|--|----------------------|---|-------------|
| * * * * *  |  |                      |   |             |
| <b>State of Hawaii Air Pollution Control Implementation Plans for Regional Haze</b>  |  |                      |   |             |
| Hawaii State Department of Health 5-Year Regional Haze Progress Report for Federal Implementation Plan, excluding Appendix H, I and J. | State-wide   | 10/20/2017           | [INSERT DATE OF PUBLICATION], [INSERT <i>Federal Register</i> CITATION] |             |

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3. Section 52.633 is amended by adding paragraph (e) to read as follows:

**§52.633 Visibility protection.**

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(e) *Approval.* On October 20, 2017, the Hawaii Department of Health submitted the “Hawaii State Department of Health 5-Year Regional Haze Progress Report for Federal Implementation Plan” (“Progress Report”). The Progress Report meets the requirements of the Regional Haze Rule in 40 CFR 51.308.

[FR Doc. 2019-17124 Filed: 8/9/2019 8:45 am; Publication Date: 8/12/2019]